

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 339/07

Case Overview

1. Ms X is aged 47, her husband Mr Y is aged 44 and they are both citizens of the People's Republic of China (PRC). Their son Master Z is aged 10 and was born in Australia. They have two other children who reside with relatives in the PRC.
2. Ms X arrived in Australia in April 1996 and Mr Y in September 1996, both by air. In January 2003 the Department (DIAC) located Mr Y, detained him under s 189(1) of the *Migration Act 1958* and placed him at Villawood Immigration Detention Centre (IDC). In August 2003, DIAC located Ms X and Master Z, detained them under s 189(1) and placed them at Villawood IDC with Mr Y. In July 2004 Ms X and Master Z were transferred to Port Augusta Immigration Residential Housing (IRH) but chose to return to Baxter IDC in June 2005. In July 2005 the family were placed in the community on a Residence Determination.
3. Ms X and Mr Y both came to Australia on Short Stay Tourist Visas. DIAC's decision in September 1996 to refuse Ms X's application for a Protection Visa (PV) was affirmed by the Refugee Review Tribunal (RRT) in December 1997. DIAC's decision in April 1998 to refuse Mr Y's application for a PV was affirmed by the RRT in December 1998. DIAC's decision in March 2002 to refuse Master Z's application for a PV was affirmed by the RRT in January 2003. DIAC initiated a s 48B request to the Minister arising out of interviews conducted by PRC officials in May 2005. As a result, in August 2006 the Minister allowed the family to make further applications for PVs. Mr Y, Ms X and Master Z were granted permanent PVs on 23 October 2006.

Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N for the family is dated 12 August 2005. Separate reports on Mr Y are dated 18 January 2006 and 7 July 2006. Separate reports on Ms X and Master Z are dated 3 March 2006 and 29 August 2006.
5. Ombudsman staff interviewed Mr Y on 21 February 2006 and Ms X on 28 September 2006.
6. Ombudsman staff sighted a letter from the South Australian police (SAPOL) dated 15 February 2006 and Global Solutions Limited's (GSL) incident report dated 8 January 2005.

Key issues

Issues in detention

7. At interview with Ombudsman staff, Ms X alleged that she was assaulted in June 2005 by another detainee at the Port Augusta IRH and that she wanted to pursue legal action but the police refused. Ombudsman staff sighted a letter from the SAPOL acknowledging that the alleged assailant was reported for common assault and the matter was considered for prosecution but *'the minor nature of the offence and the cost of proceeding would far outweigh any penalty that [the assailant] was likely to receive taking into account that both parties were now residing in New South Wales'*. SAPOL advised that both parties were advised of this decision by letter and the matter was closed.

8. Ms X also told Ombudsman staff that there was an incident of alleged assault at Port Augusta IRH that involved her son and an older detainee. Ms X requested a copy of the closed circuit television (CCTV) footage of the incident but it had not been provided. Ombudsman staff investigated this matter and were advised by DIAC/GSL that the CCTV footage was no longer available. GSL's incident report from that incident in January 2005 indicates that Master Z complained to GSL who interviewed the parties involved and viewed the CCTV footage of the incident. The incident report concluded that nothing malicious had been found. GSL reported the incident to Child Youth and Family Services, notified DIAC and cautioned the person involved.
9. Operational Procedures require GSL to report all alleged incidents of assault to the police, relevant child welfare agency and ensure that the CCTV footage is preserved. The incident was not reported to the police until October 2006, by which time the other party had been removed from Australia, and the CCTV footage was no longer available. The Ombudsman notes that although most of the action taken by GSL was appropriate in the circumstances, it is important that all of the operational procedures be followed in case the police, or other bodies subsequently decide to investigate a matter.

Ombudsman assessment/recommendation

10. The Ombudsman notes that Ms X, Mr Y and Master Z are now the holders of PVs and makes no recommendations in this report.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date